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PROMOTION AND PROTECTION OF THE RIGHTS OF CHILDREN

Sale of children, child prostitution and child pornography

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 49/210 of 23 December 1994, the provisional report prepared by Ms. Ofelia Calcetas-Santos, Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography.

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I. INTRODUCTION

1. The present provisional report is submitted in accordance with General Assembly resolution 49/210 of 23 December 1994. This is the first report prepared by Ms. Ofelia Calcetas-Santos, who was appointed in January 1995 as Special Rapporteur on the sale of children, child prostitution and child pornography, following the resignation of her predecessor, Professor Vitit Muntarbhorn, in October 1994.

2. The Commission on Human Rights, at its forty-sixth session, by its resolution 1990/68 of 7 March 1990, decided to appoint a Special Rapporteur to consider matters relating to the sale of children, child prostitution and child pornography, including the problem of the adoption of children for commercial purposes. The Economic and Social Council, by its decision 1990/240, requested the Chairman of the Commission to appoint, for a period of two years, the Special Rapporteur. Subsequently, Professor Vitit Muntarbhorn was appointed as the Special Rapporteur. The mandate of the Special Rapporteur was extended for three years by Commission on Human Rights resolution 1992/76, which was approved by Economic and Social Council decision 1992/244. At its fifty-first session, the Commission decided, by its resolution 1995/79, to extend the mandate of the Special Rapporteur for three years.

3. In addition to the above-mentioned resolutions, the Commission on Human Rights adopted resolutions 1991/53, 1993/82 and 1994/90 concerning the mandate of the Special Rapporteur.

4. As Special Rapporteur, Professor Muntarbhorn submitted four annual global reports to the Commission, supplemented by three addenda concerning his country visits (E/CN.4/1991/51, E/CN.4/1992/55 and Add.1, E/CN.4/1993/67 and Add.1, E/CN.4/1994/84 and Add.1). He also submitted, in accordance with General Assembly resolution 48/156, a provisional report to the General Assembly at its forty-ninth session (A/49/478).

5. The Special Rapporteur appreciates her predecessor's great contribution made through his reports to the Commission on Human Rights and the General Assembly, which contain a wealth of exhaustive and substantial information and recommendations. In his four years of service to the cause, he had painstakingly gathered and processed data for the purpose of giving a very comprehensive picture of the gravity of the mandate.

II. CONSIDERATIONS OF A GENERAL NATURE

A. The mandate

6. The issues concerning the mandate of the Special Rapporteur deal with the sale of children, child prostitution and child pornography, phenomena of child abuse that have reached alarming proportions in all corners of the world.

7. To say that these developments have caused dismay, if not utter revulsion, in the international community would be an understatement. The sale,

prostitution and pornography of children are not only a direct assault on the child's physical and mental well-being and personal dignity and integrity but also a very poor investment for the future.

8. In discussing the concerns of the mandate the intention is not to arrive at allocation of blame, but to recognize that all countries, developing or developed, can do a lot to ease the problem, whether they are from the supply or the demand side.

B. Review of the pertinent provisions under the Convention on the Rights of the Child

9. The 1990s ushered in a new international concern for children. This attention is long overdue. The most significant effort is the Convention on the Rights of the Child, and it is most gratifying to note its almost universal acceptance in a very short period of time.

10. The Convention is replete with provisions for the protection of children against trafficking and any form of sexual exploitation and abuse. Articles 19, 34, 36 and 39 are particularly significant.

11. The protection mandated by article 19, which applies to children in the care of parents or other persons, recognizes the child's right to protection against abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. States parties are obliged to take measures for the implementation of such protection, including for the "identification, reporting, referral, investigation, treatment and ... as appropriate, for judicial involvement".

12. Article 34 imposes on States parties a duty to take measures to prevent the exploitation of children for purposes of prostitution and pornography, and, more generally, any "inducement or coercion .. to engage in any unlawful sexual activity".

13. Under article 36 States parties are obligated to protect children against "all other forms of exploitation prejudicial to any aspects of the child's welfare", and this in effect prohibits the instrumental use of children for other criminal purposes.

14. The Convention likewise highlights the needs and rights of children who have been victimized. The key provision is article 39, which imposes on States parties the duty to "promote the physical and psychological recovery and social reintegration" of children who have been victims of, inter alia, "any form of neglect, exploitation, or abuse". Such measures should take place in an environment which fosters the health, self-respect and dignity of the child.

C. Methodology

15. Since the present report is her first, the Special Rapporteur wishes to start by looking at her mandate in general terms, rather than immediately

getting into specific situations and cases, in order to determine how best she would be able to carry out her mandate. The Special Rapporteur had sent out her questionnaires. However, as the majority of replies are still expected to reach her in the near future, she wishes to defer examination of the replies received from Governments, intergovernmental and non-governmental organizations, as well as information received since the beginning of 1995. For this purpose she uses the approaches described below.

1. Setting the parameters of the mandate

16. There is a need to set boundaries, not only with respect to the mandate as a whole but also within the three concerns of the mandate. This is not intended to restrict the fields of application but simply to avoid, as much as possible, any overlapping and duplication of efforts. Consistent with this approach is to take up the issues of child labour, for example, or children in war, only with respect to instances which are connected with any one of the specific concerns of the mandate.

17. Even within the mandate itself is a need to have more precise definitions in order to obviate confusion and overlapping between sale, prostitution and pornography. For this purpose, the following definitions are material.

(a) Sale of children

18. The Special Rapporteur defines sale of children as "the transfer of parental authority over and/or physical custody of a child to another on a more or less permanent basis in exchange for financial or other reward or consideration". This definition would exclude transactions which are strictly on a temporary basis, as when the child is "rented" out, and would therefore create less confusion as to whether a transaction constitutes sale or prostitution or pornography.

(b) Child prostitution

19. Prostitution in general had traditionally been defined along the lines of a woman having sexual intercourse with another for price or consideration. It is only recently that it has metamorphosed into something quite different, no longer limiting prostitution to women and no longer limiting the act to sexual intercourse. Black's Law Dictionary, 6th ed., 1990, defines prostitution as: "An act of performing, or offering or agreeing to perform a sexual act for hire. Engaging in or agreeing or offering to engage in sexual conduct with another person under the fee arrangement with that person or any other person. Ariz. Crim. Code 13-3211 (5). Includes any lewd act between persons for money or other consideration. Cal. Penal Law 647 (b)."

20. Using and applying the above criteria to child prostitution, the Special Rapporteur now defines it as "the act of engaging or offering the services of a child to perform sexual acts for money or other consideration with that person or any other person."

21. It will be noted that under this definition child prostitution is not "committed" by the child itself, but by the person "engaging or offering the services of a child". The definition would also lessen confusion concerning other forms of child exploitation and abuse.

(c) Child pornography

22. There can hardly be any better illustration of the complications brought about by the advent of modern technology than in the field of pornography, including child pornography. Even a cursory glance at the following definitions of child pornography cited in the reports of the previous Special Rapporteur would lead us to no other conclusion than that the question of definition is far from settled:

(a) Any visual or audio material which uses children in a sexual context; 1/

(b) A visual depiction of anyone under the age of 18 engaged in explicit sexual conduct, real or simulated, or the lewd exhibition of the genitals; 2/

(c) A permanent record of a child being sexually abused by an adult; 3/

(d) The visual or audio depiction of a child for the sexual gratification of the user, and involves the production, distribution and/or use of such material. 4/

23. In the light of recent developments where the telephone or other audio devices are also being widely used for pornographic messages involving children, there is now a need to distinguish visual from audio pornography.

24. Thus, the Special Rapporteur now defines visual pornography as "the visual depiction of a child engaged in explicit sexual activity, real or simulated, or the lewd exhibition of genitals intended for the sexual gratification of the user, and involves the production, distribution and/or use of such material".

25. Audio pornography, on the other hand, is now defined as "the use of any audio devices using a child's voice, real or simulated, intended for the sexual gratification of the user, and involves the production, distribution and/or use of such material". This should be distinguished from the use of audio devices to offer the sexual services of a child, which would then be considered as solicitation so as to fall within the ambit of prostitution, and not pornography.

2. Review of the causes giving rise to the concerns of the mandate

26. The second approach of the Special Rapporteur is to make a review of the diverse causes giving rise to the sale of children, child prostitution and child pornography. Different factors have been identified by the previous Special Rapporteur and by different forums addressing children's concerns. They are multidimensional, ranging from structural or systemic to individual and less

organized incursions against children. It should be remembered, however, that each one usually involves an interaction with one or more of the others.

27. The present review is aimed at making an analysis of what can be addressed on a priority basis and what steps can be most effective in the search for solutions. The following are identified as more significant among the causes of the problems concerned:

(a) Economic need, which is probably the most significant single factor on the supply side;

(b) Socio-cultural discrepancies, which encompass a wide range of pernicious practices inimical to the interests of the child including gender bias and other forms of discrimination based on race, caste or class;

(c) Population growth both on a national scale and to a more localized extent such as urban migration, which is usually caused by poor planning policies and rapid urbanization and industrialization;

(d) Erosion of the family structure, both nuclear and extended, resulting in the deprivation of one of the best stabilizing elements in the lives of children;

(e) Criminality giving rise to a new cause for alarm, i.e. the involvement of children in and for criminal activities. It ranges from small-scale or individual efforts to wide-scale international syndicates, with modus operandi ranging from persuasion to more sinister means like threats, intimidation or outright kidnapping. It may be appropriate to analyse at this point what is meant by involvement of children "in" criminal activities and the use of children "for" criminal activities, as the response to one type is quite different from the other. The sale of children, for example, would fall under use "in", while the cases of drug trafficking and theft would be instrumental use of children "for" criminal activities. The distinction may be very useful in the recommendation for legislative reforms. There are legal systems where the line between the two types of exploitation may be quite blurred. For instance, child prostitutes are treated in some countries as having violated the law instead of being purely victims, and are therefore considered as children used "for", instead of "in", criminal activities;

(f) Inter-generational causes wherein abused children turn into perpetrators of abuse themselves because the violence suffered is interpreted by children as the normal way of life, and therefore worth emulating;

(g) Political priorities, especially concerning budgetary allocations, which are frequently lopsided with the development and protection of children considered as very low in priority. Debt servicing of many countries result in cut-backs and realignment of expenditures. Structural adjustments almost always concentrate on macroeconomic considerations at the expense of social services affecting children;

(h) Erosion of societal and spiritual values which also adversely affect the judgement of the parents, who may view the child as a factor of production

or as an investment for economic reasons rather than as an entity vested with substantive rights and inherent dignity. 5/

3. Focus on selected catalysts

28. An analysis of the above causes would show the complexities of the problem which cannot be addressed by a single solution. The starting-point, therefore, is the determination of what catalysts, or agents of change, can be utilized to be effective tools. The Special Rapporteur identifies three catalysts in instituting reforms benefiting children. They are the education system, the justice system and the media.

29. The choice is not made lightly, and is based mainly on the realistic assessment that for most countries any hope for immediate action should be coupled with the least demands for structural change and resource allocation.

30. The education system, the justice system and the media are already in place in almost all parts of the world, though admittedly to varying extents. Properly motivated, they can be potent partners for children's protection and rights. Together, they can address practically all of the causes giving rise to the phenomena of sale, prostitution and pornography involving children. Media and education, working together, can go a long way in strengthening the family, teaching the adverse effects on children of any type of discrimination and of violence, creating awareness in policy makers of the imperative need to upgrade children's concerns in their prioritization and to tighten the laws and enforcement measures against criminality. They can also educate children how to be alert so that their integrity is not assailed by any attempt to draw them into the net of sale, prostitution and pornography. Education and the media can also be gate providers for access to the justice system of children whose rights have been violated.

31. Media and the justice system have to work hand in hand to prevent double victimization of children. Double victimization occurs when children, either as complainants or as alleged offenders (and therefore already considered as victimized by society), suffer all over again through improper and insensitive handling by the courts and the media.

32. Through this focus on specialized fields, resources, both human and financial, could be harnessed to implement measures which would have a tangible impact. This will instil a sense of accomplishment and lessen the sense of futility and frustration. Achievable goals would be easier for many countries to implement both in terms of resources and in terms of operational manageability; this, in turn, could encourage the adoption of a more comprehensive strategy in the future.

33. This approach is not intended to disregard other factors; indeed, the establishment of networks with the other sectors is imperative in the various stages of implementation. For instance, psycho-behavioural scientists and the non-governmental organizations will have to take a very active role in all the different strategies, particularly the preventive ones.

D. Country visits

34. In the light of the above, the Special Rapporteur intends to undertake field missions in the course of her present mandate, in order to inform herself about situations and issues brought to her attention. The Special Rapporteur will elaborate planning of such visits, keeping in mind the need to cover countries in the different regions, namely, Africa, the Americas, Asia and Europe.

III. CONSIDERATIONS OF A SPECIFIC NATURE

A. Sale of children

35. Sale of children is a pernicious practice that should be condemned regardless of the motivation or the purpose for which it is done. It is of no moment whether the transaction ultimately results in benefit for the child or not. It is a direct affront to the integrity of the child as a human being to reduce him to an article of trade and commerce and to grant anybody, even the parents, the power to dispose of him as if he were chattel, in exchange for any financial consideration or reward.

36. Some of the cases of sale that have been more or less substantiated have been for commercial adoption, for prostitution, for pornography and for labour. There have also been some allegations that children have been sold for war, and even for organ transplantation.

1. Sale for commercial adoption

37. In a broad, non-legal sense adoption has been defined by Mr. Muntarbhorn as the institutionalized social practice through which a person, belonging by birth to one family or kinship group, acquires a new family or kinship ties that are socially defined as equivalent to biological ties which supersede the old ones, whether wholly or in part. He also made the distinction that in the legal sense, it implies that the adopted child becomes entitled to all the rights, including hereditary rights, to which the biological child would be entitled - "filiation". 6/ The non-legal concept of adoption would include some adoption-like arrangements which fall short of transferring complete parental authority or which do not grant the adopted child the entitlements of a biological child. Adoption may take place on a domestic or local basis, as when both the adopter and the adopted are citizens and/or residents of the same country, or it may be inter-country, as when the adopter and the adopted are citizens and/or residents of different countries.

38. The Special Rapporteur agrees with the above definitions. What is not clear, however, is when adoption, legal or non-legal, could be considered commercial adoption so as to fall within the range of sale of children. While adoption, both in its non-legal and legal senses, oftentimes presents an ideal solution that works to the benefit of both the adopter and the adopted, it can also be the subject of extraneous considerations like the prospect of financial gain that can negate any regard for the best interests of the child. In actual

practice, adoption is almost always coupled with some exchange of consideration, whether by way of payment of fees to the intermediary like the adoption agencies or by way of direct reward or remuneration to the parents. Article 21 of the Convention on the Rights of the Child warns against "improper financial gain" for those involved in inter-country adoption.

39. The Special Rapporteur feels that "improper financial gain" should qualify only considerations given to legitimate or authorized adoption agencies. No amount of consideration or reward, no matter how small, made to unauthorized intermediaries or to the parents of the child should be viewed as "proper". And this rule should apply not only to inter-country adoptions, but to domestic or local adoptions as well.

(a) Problem areas in inter-country adoption

40. Inter-country adoption seems to pose more problems than domestic or local adoption. Some of the more common ones that have been identified are the following:

(a) The channels for inter-country adoptions are at times clandestine and illegal, providing shortcuts which do not ensure the protection of the interests of the child. In receiving countries, would-be adoptive parents, often frustrated by what is often perceived as the more tedious route of local adoption, often succumb to the promise of immediate availability of children placed for adoption in a foreign country, and are usually willing to pay substantial amounts to facilitate the process;

(b) In sending countries, the profitability of the arrangement reduces a lot of supposed adoption agencies to thinking of it as a business venture in which the welfare of the child is often totally disregarded. Attention shifts from adoption as an alternative arrangement primarily for the benefit of the child, to the more commercial concern of supplying a commodity, in this case children. Thus, children are obtained through illicit or questionable activities such as offering a reward to secure the consent of the biological parents or even kidnapping children and falsifying documents like birth certificates or consent papers;

(c) There are also cases where the adoption process is used for the more sinister purposes of child trafficking for the sexual market or for cheap, if not unpaid, labour. This is an area where there might be more organized, if not syndicated, violations;

(d) Monitoring the child after the finalization of the adoption process is not possible in a lot of countries as constitutional and legal protective mechanisms, such as the right to privacy, may be invoked.

(b) Problem areas in local adoption

41. Problems surrounding local adoption are identified as follows:

(a) The high cost of legal adoption in some countries gives rise to a proliferation of alternative methods mostly involving the falsification of birth

documents. The confidential nature of adoptions renders investigation of authenticity very difficult;

(b) Independent adoptions are prone to tactics to circumvent requirements on pre- and post-adoption services and proper parent-child matching processes.

(c) Surrogacy

42. Also new on the international scene are surrogacy or "womb for hire" arrangements which may have legal implications never faced before. Foremost among the issues that may arise would be the following:

(a) Can this be considered adoption and, if for consideration, can this be commercial adoption?

(b) Who would be considered the biological parents of the child?

(c) What would be the legal entitlements of the "donor" parent(s) as against those of the "host" parent(s)?

(d) Is this kind of arrangement susceptible to legal control and/or monitoring?

43. There are reports that this phenomenon is now legalized in some countries. It must be thoroughly researched and all its implications, moral, legal and medical, must be established in order to have a better understanding of the intricacies it can lead to. Viewed from another angle, another issue is whether it may also be considered as a form of sale, and not a question of adoption at all.

2. Sale for prostitution

44. Children are being sold into prostitution in many parts of the world. Sale for purposes of prostitution must be distinguished from the act of prostitution itself or the act of solicitation or pimping, both of which would fall under the second concern of the mandate and not under sale.

3. Sale for pornography

45. Pornography can also be one of the instances of sale. Here again it must be distinguished from the act of "renting out" the child for a specified period for the purpose of being utilized for either visual or audio pornography.

4. Sale for labour

46. In regard to child labour exploitation, the approach of the first Special Rapporteur was to consider any exploitation of child labour as a form of sale of children. This may not be a very definitive approach as it leaves a lot of room for "gray areas". It is quite clear, for example, that children working in

family-owned businesses or enterprises cannot be considered to be the subject of sale, and therefore would be outside the concern of the mandate. This delineation is made to avoid duplication of efforts and unnecessary encroachment on the mandates of other agencies.

47. In 1993 the Commission on Human Rights adopted the Programme of Action for the Elimination of the Exploitation of Child Labour. The International Labour Organization has also adopted a Programme of Action against Child Bondage, calling for effective legislation, enforcement, education, training and rehabilitation as well as advocacy and community mobilization.

5. Sale for war

48. It is not quite clear whether the involvement of children in armed conflicts all over the world has been effected through any form of sale, or whether it has been done through conscription or voluntary participation. This factor would have to be established and would determine whether war by itself causes the sale of children.

6. Organ transplantation

49. The sale of organs of children for purposes of organ transplantation is a very sensitive issue that should be addressed with a great deal of prudence as it can cause unwarranted alarm. There are reports concerning the phenomenon but there seems to be no hard evidence as to its actual practice. Of course, this should be coupled with the realization that the practice, if it does exist, must perforce be conducted with utmost secrecy which would make detection very difficult. While there is ground to believe that the reports are not exactly unfounded, the Special Rapporteur is not in a position at this time to draw a conclusion on the matter. However, the gravity of the reports should be looked into by all the agencies concerned, especially the World Health Organization and the United Nations Children's Fund. Efforts should be directed towards gathering evidence rather than mere anecdotal reports so that more positive action can be taken in terms of preventive and/or remedial measures.

50. In this connection, the Special Rapporteur takes note of the following international efforts made regarding the question of organ transplantation:

(a) The Convention on the Rights of the Child which protects children's right to life and freedom from abuse and exploitation;

(b) The Guiding Principles on Human Organ Transplantation issued by the World Health Organization which prohibit the removal of organs from the body of a living minor and forbid commercialization (International Digest of Health Legislation, 1991, vol. 42, pp. 389-413); 7/

(c) The resolution passed by the European Parliament in 1993 prohibiting trade in transplant organs. 8/ It called for action to "put a stop to the mutilation and murder of foetuses, children and adults in certain developing countries for the purpose of providing transplant organs" and "a ban on the

removal of organs of minors, from adults who are legally incapable and from anencephalic infants".

B. Child prostitution

51. Among the most serious and detestable types of violence against children is sexual exploitation, especially prostitution. It is likened to torture in terms of the trauma caused to children and is one of the greatest infringements of their rights. It is on the increase globally, and is a profitable industry said to be netting an estimated five billion dollars annually. A report prepared by Shirley Mabusela for the expert group meeting on children and juveniles in detention: application of human rights standards, held at Vienna from 30 October to 4 November 1994, states that conservative estimates indicate that one million children, mostly young women, are forced into the "flesh trade"/sex markets every year.

52. The most commonly cited causes for prostitution are the needs arising from poverty. This may be a truism in a lot of cases, but it will only answer one side of the problem, and that is the supply side. There may be other considerations for the existence and proliferation of child prostitution in some developed countries.

53. The cause of the increasing demand for children in the sexual market is less visible and more difficult to address. Children fall victim to exploitation both from within and without, that is, both from their own countrymen as the consumers themselves or as the middlemen for others, including foreigners.

54. Any effort addressing child prostitution will not be complete without tackling the issue of sex tourism. A definition of sex tourism offered by Henryk Handschuh in his paper for the expert group meeting is "tourism organized with the primary purpose of facilitating the effecting of a commercial sexual relationship". Applying this definition, child sex tourism can be said to be "tourism organized with the primary purpose of facilitating the effecting of a commercial sexual relationship with a child".

55. An even more specialized clientele of sex tourism are paedophiles, who cause damage to a greater number of children. Paedophilia is generally defined as an abnormal attraction to young children, including those below the age of puberty. They are big consumers both of child prostitution and child pornography and are to be differentiated from child sex tourists, who are not motivated by the paedophiles' predilection for children.

56. Also comparatively very new on the international scene is the fact that where girls used to be the main targets of abuse, there has been a palpable increase in the violation of young boys. Studies on paedophilia should include determination of the percentage of girls and boys abused by paedophiles.

57. Among the international efforts addressing the issue of sex tourism are the Manila Declaration on World Tourism of 1980 and the Tourism Bill of Rights and Tourist Code (Sofia, 1985), which spell out the obligations of travellers and

tourists towards the places they visit. The Bill of Rights and Tourist Code in particular calls upon States and individuals to prevent any possibility of using tourism to exploit others for the purpose of prostitution.

58. Although most countries have laws punishing the sexual exploitation of children, there are factors which deter effective prosecution. Among the more common complaints are:

(a) The question of establishing the real age of the children (i.e. whether they have reached the age of consent). This is particularly true in developing countries where even the registration of births is not mandatory or is not effectively implemented;

(b) The lack of uniformity in legislation concerning, first, exactly what acts are deemed to be punishable and second and more important, who is criminally culpable. In some countries, prostitution in itself is a criminal offence, regardless of the age of the prostitute;

(c) The lack of political will and the passivity and tolerance of law enforcement authorities in many countries, especially where there are cultural and ethnical considerations such as gender bias.

C. Child pornography

59. The advent of new technology gave birth to concepts and applications like cyberporn or audio-pornography, not envisaged by most legislation. Even where legislation already includes measures against the proliferation of pornographic materials, actual detection and monitoring may pose serious barriers to effective prosecution of offenders. Constitutionality will definitely be a legal issue that cannot be ignored even if mechanisms could be devised to seek out the end-users.

60. In most countries there is a lack of objective standards that can be applied as tests of whether certain materials are pornographic or not. Serious study must be made to determine less subjective standards than "indecent" or "obscene". In a lot of countries what may be "indecent" may not necessarily be "obscene".

61. As pornography has attained global proportions, some of the pertinent issues that are certain to arise are the following:

(a) Lack of uniformity in the elements of the crime, even if it is assumed that pornography is a crime world wide. For example, virtual reality imagery without the use of actual children as models may not be considered pornographic in some countries simply because real children are not used;

(b) The degree of culpability of those who merely use or possess the materials vis-à-vis those who distribute and manufacture them;

(c) When pornographic materials cross national boundaries the determination of the forum having jurisdiction over the offence will also pose a

problem. A corollary of this will be the question of which standards shall be applied.

IV. RECOMMENDATIONS

62. In accordance with the methodology adopted by the Special Rapporteur, recommendations are made hereunder concerning the utilization of the three catalysts and their respective strategies for national or local implementation. To supplement efforts on these levels, however, there must also be corresponding action on the international level, recommendations for which are also made. The measures recommended under each catalyst and strategy are not exclusive and are intended mainly as guides in the manner of execution.

A. Recommendations for national or local action

1. The first catalyst: the school system

63. A focus on measures to address the problem of sale, prostitution and pornography involving children directs us towards the school system as a prime catalyst because of the crucial role it plays not only in imparting knowledge but also in supplementing and providing a natural support structure to the role of the parents in enabling children to realize their full potential as human beings. It is in recognition of the vital role education plays in shaping the minds of the young that the Special Rapporteur considers it to be an indispensable partner in attacking the issue of child abuse.

64. The targets for action are school administrators, teachers, teacher aides, guidance counsellors, parent-teacher associations and other service providers.

65. The prevention strategies shall include:

(a) Consciousness-raising programmes on children's rights through the integration of the concepts and ideals of the Convention on the Rights of the Child and of the subjects of concern to the mandate in the school curriculum. This can be done through teaching modules, comic books, plays and dramatization, and discussion forums and dialogues with children. A sample module serving as a jump-off point for discussions on the Convention on the Rights of the Child, prepared by Dan O'Donnell for the Vienna expert group meeting, is as follows:

> Article 34 imposes on State parties a duty to take measures to prevent the exploitation of children for purposes of prostitution and pornography, and, more generally, any "inducement or coercion to engage in any unlawful sexual activity".
>
> Questions:
>
> 1. What are some of the factors which might prevent a child who has been abused sexually from reporting this fact or seeking help? What could be done to encourage the children to look for help?

2. At what age do you think children should be taught about the danger of sexual abuse?

3. In 1994 accusations that a famous singer committed sexual abuse got a lot of publicity throughout the world. Summarize the whole story, as far as you remember it. What can be learned from this case about how cases of possible sexual abuse are handled, or about how they should be handled?

(b) Sensitization programmes for the target groups on the overall vulnerability of the child and the different stages of development. This component helps the gatekeepers of the school system to focus on the child as a human being. The programmes can be undertaken in partnership with the media and psychologists and could include film clips and lectures by psychologists-sociologists on the traumatization of child abuse victims;

(c) "Alert" programmes on early detection of child abuse and identification of children at risk. These may include identification of signs of physical and sexual abuse in schoolchildren, establishment of a referral point once such signs are detected, and guidelines on what steps are to be taken by the referral point once a case occurs;

(d) Sensitization programmes on the crucial role of the family, both nuclear and extended, in the nurturing and care of children so that adoption or adoption-like arrangements are considered only as a measure of last resort;

(e) Education on the evils of any type of discrimination, whether based on race, sex, caste or social status;

(f) Strengthening of moral values.

66. The intervention measures shall include:

(a) Formulation of training programmes to create early response mechanisms to detected violations of the mandate including the establishment of a quick referral system to access services outside the institution. This can include conferences with parent(s)/guardians, referral for medical attention and documentation, referral to social workers and referral to police authorities;

(b) Establishment and/or strengthening of counselling programmes within the school system and emphasis on the importance of the role of the guidance counsellors or their counterparts in reaching out to children.

67. The rehabilitation measures shall include:

(a) Establishing counselling programmes for child victims to enable them to be reintegrated with the least possible trauma;

(b) Establishing specialized programmes with partner agencies where necessary.

2. The second catalyst: the justice system

68. There can be no question that the justice system plays a very crucial role not only in the field of remedial action but also in the prevention of child abuse and exploitation.

69. A number of initiatives on the international level address the concerns of the child in conflict with the law. Witness the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines). The same cannot be said, however, of the plight of the child victim, and this is a need crying for attention. This need is recognized by the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which indicates that sensitivity training regarding the needs of victims should be given to police and legal, health and social service officials. Likewise, one of the recommendations of the Vienna expert group meeting on children and juveniles in detention urges States to ensure that children who have been sexually exploited or who are at risk of being sexually exploited have access to assistance that meets their needs, including access to the mechanisms of justice. 9/

70. The targets in this regard are judges, prosecutors, lawyers, law enforcement agents, social workers (including behavioural scientists), the media and the community.

71. The prevention strategies shall include:

(a) Steps to ensure that the offended child is brought within the protective mantle of the justice system. There are two main reasons why cases of child abuse are rarely brought to the courts for redress. First, the parents and/or guardians are themselves often the culprits. They are the ones who sell the children or send them out to earn money in the streets either through prostitution or pornography. This being so, the matter of who will bring the abuse to the attention of the courts becomes a serious problem. The second reason is the lack of confidence, if not downright mistrust, that a lot of people have for the justice system. This is particularly true in the area of sexual abuse, where there is often serious doubt that bringing the case to the courts will grant the hoped-for redress. Very often the fear is that a suit will only result in double victimization of the child and will only compound and aggravate the degradation already suffered;

(b) The effective prosecution of cases against abusers of children; any conviction resulting therefrom should be given wide publicity so as to give a clear message to exploiters of children. This is a very valuable tool of prevention. Children are very often the subject of abuse in flagrant and blatant disregard of the law because of a perception, not often misplaced, that the abusers will never be called upon to account for their action for the reasons stated above;

(c) Review of the laws to ensure that the filing of complaints regarding offences against children can be done by persons other than the parent(s) and/or guardian.

72. The intervention measures shall include:

(a) Developing sensitization programmes for gatekeepers of the justice system on the vulnerability and needs of the child, which are quite different and distinct from those of adults;

(b) Review of procedural laws or rules on handling of cases involving children;

(c) Establishing training programmes for gatekeepers on how to handle children in court either as victims or as offenders, taking into consideration the viewpoints of the different components of the justice system such as law enforcement agents, social workers, lawyers, prosecutors, the media, trial judges and behavioural scientists;

(d) Instituting monitoring schemes to track the progress of cases involving children. This should lead to the development of case-studies and other materials that may be used as a tool in continuously sensitizing the gatekeepers to the specialized needs of children.

73. The rehabilitation measures shall include:

(a) Developing programmes that promote institutional support for the family as a better recourse than rehabilitation and correctional institutions for children;

(b) Where institutionalization cannot be avoided, setting up monitoring mechanisms to see to it that international standards on juvenile delinquency are not violated.

3. The third catalyst: the media

74. The media are the main gatekeepers of information and play an invaluable role in linking the world together. Properly motivated, they could be in the forefront of advocacy for child rights and protection.

75. The Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995 urged States, while respecting the freedom of the media, to invite media associations and media self-regulatory bodies to consider developing appropriate measures and mechanisms to contribute to the eradication of violence against children and to enhance respect for their dignity, by discouraging the perpetuation of pro-violence values. 10/ The background paper on juvenile delinquency and youth crime prepared by the Crime Prevention and Criminal Justice Branch of the Secretariat for the Vienna expert group meeting likewise recognized that the media, through responsible reporting and special educational campaigns, had a

crucial role to play in socialization, delinquency prevention and empathy with victims from the early years onwards.

76. The Hanoi Consensus on a Plan of Action, adopted at the third Regional Consultation on the Rights of the Child held from 3 to 7 April 1995 in Viet Nam, recommends that consultations with social mobilizers, in particular the media, should be organized to encourage awareness programmes to promote the best interests of the child, including knowledge of the justice and legal systems.

77. The targets for this action are media policy makers, media associations and media practitioners.

78. The prevention strategies shall include:

(a) The conduct of consciousness-raising and public education campaigns on the plight and vulnerability of children victims of violence;

(b) The reduction of sensationalism, which affects not only children but the public as a whole, raising levels of fear and making people callous to human suffering;

(c) A more specialized, balanced and expert reporting of crimes involving children paying attention to regional, cultural and other variables that may affect attitudes, with a view to aiding crime prevention and control;

(d) Providing assistance to the mandate by collecting and disseminating information so as to mobilize the public to participate in the protection of children. This may include the development of programmes in media literacy and modules on mass media and prevention of violence against children;

(e) Formation of networks by which all the media can sensitize the different sectors, business, consumers, law enforcement, education, the public, etc., on the rights of children;

(f) Mechanisms for self-monitoring and policing especially in the field of child pornography;

(g) Standard setting addressed to the different sectors (print, films, advertising, TV, radio, etc.) focusing not so much on what the media have a right to do as on what is the right thing to do for children;

(h) Extensive campaigns for value formation and change of attitudes to discard practices pernicious to children's interests.

79. The intervention measures shall include:

(a) Investigation and in-depth reporting to expose abuses against children, including those committed by government and law enforcement officials;

(b) Mobilizing quick action responses on the part of the relevant government agencies to abuses against children;

(c) Adoption of procedural rules in the handling of cases involving children by the media, whether the child is the victim or the offender. A very important example of this is the confidentiality of the identity of the child;

(d) Networking and alliance-building with both governmental and non-governmental bodies for more effective and thorough documentation of cases needing referral to authorities;

(e) Self-policing and self-imposed sanctions for violations of children's rights especially in the field of child pornography.

80. The rehabilitation measures shall include:

(a) Sensitizing the public to the fact that a child, both as a victim and as an alleged offender, is a child needing help and not condemnation;

(b) Creating projects that may address the livelihood needs of children trying to be reintegrated into society, by sensitizing the business sectors of the community;

(c) Instilling greater empathy for children victims in order to obviate stigmatization. This can be done in partnership with behavioural scientists who can help in dramatizing situational cases illustrative of the plight of children.

B. Recommendations at the international level

81. The following action should be taken at the international level:

(a) Make an inventory of:

(i) All initiatives and programmes of the United Nations and its affiliate agencies addressing the concerns of the mandate. This has to receive high priority, first to avoid duplication of efforts and depletion of resources and second to help identify strengths and weaknesses in the search for solutions;

(ii) All initiatives and programmes of non-governmental agencies addressing the concerns of the mandate. The NGOs have proven themselves to be indispensable partners in children's concerns and they can be very helpful in filling certain gaps that may require urgent attention;

(iii) All recommendations made under (i) and (ii) above for more systematic analysis, prioritization and allocation of actions which can be addressed on a short-term, medium-term and long-term basis;

(iv) All bilateral, regional or international agreements addressing the concerns of the mandate. These can be very useful models for States wishing to enter into similar arrangements;

(b) Organize regional or international conferences of behavioural scientists (psychologists, psychiatrists, sociologists) and medical practitioners to address the concerns of the mandate, particularly on the following issues:

(i) Repercussions of violence against children on their physical, mental and psychological well-being;

(ii) Profiles of both the victims and the offenders which will be a very valuable input to preventive measures;

(iii) Creation of programmes aimed at sensitizing all the other sectors on the special needs of children;

(iv) Preparation of guidelines and modules for training programmes on rehabilitation of child victims and offenders;

(v) Study on children's adaptation to stressful life circumstances in different cultural and socio-economic contexts, for example urban stress. Information about forces that promote adaptation will help build preventive programmes for children at risk;

(vi) Study of the causal relationship between sex and violence on television and in other media and the level of sex and violence against children;

(c) Organize regional or international conferences of media policy makers and practitioners to consider the concerns of the mandate, particularly on the following issues:

(i) The need for guidelines on responsible reporting of cases involving children victims and offenders, especially on the matter of confidentiality of their identity;

(ii) The need to change the current focus on sensationalism based almost exclusively on the negative aspects of events to a more positive approach targeted at character-building and value formation, in order to lessen discouragement and frustration and instead enhance inspiration and role models;

(iii) The need for measures to sensitize and eventually mobilize the different sectors of society to be child-friendly;

(iv) The establishment of self-regulatory bodies with a view to giving awards of recognition to those who foster the interests of the child, and to impose sanctions on those who violate them;

(d) Organize regional or international conferences attended by the different actors in the justice system and addressing the concerns of the mandate, particularly the following issues:

(i) The need for special procedural rules in order to make all the stages in the justice system child-friendly, from the filing of the complaint to the termination of the trial;

(ii) Easier access of the child victim to the justice system;

(iii) Identification of the different agencies or actors participating in cases involving children and the allocation of roles each one has to play for their protection;

(iv) The possible need for bilateral or multilateral agreements so as to prosecute offenders where the offence has international components;

(v) The issue of corruption in Government and its deterrent effects on the prevention of abuse against children;

(e) Organize regional or international conferences of educators addressing the concerns of the mandate, particularly the following issues:

(i) The need to provide easier accessibility of children, especially disadvantaged children, to educational facilities;

(ii) The need to develop programmes of alternatives to formal education for children who because of their geographical situation do not have easy access to traditional schools or for children who have to earn a living and are therefore not able to attend during regular school hours;

(iii) The need to strengthen guidance counselling and related areas as a means of prevention and of remedial action;

(iv) The need to review existing curricula to make sure that they are responsive to the developments and changes brought about by modern technology; that they include value formation and discussion of socio-cultural considerations that result in highly discriminatory practices like biases (against women, the girl child, cultural minorities) and the treatment of the children as though they were the property of the parents; and that there is sufficient dissemination of information on the matters of concern to the mandate, especially prostitution and pornography.

V. CONCLUSION

82. Given the pertinent provisions under the Convention on the Rights of the Child, the mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography, and the comprehensive picture of the gravity of the situation uncovered by Special Rapporteur Professor Vitit Muntarbhorn during his term of service, the present report has endeavoured to set the parameters of the mandate by offering more precise definitions of what exactly is meant by sale of children, child prostitution and child pornography, to review the causes giving rise to the concerns of the mandate, and to focus on

selected catalysts for change, namely, the education system, the justice system and the media, and the indispensable roles they must play in any and all efforts to resolve the problems and complexities of the issues under the mandate in a holistic manner.

83. The present report contains recommendations for national or local action, in the process identifying the target persons and organizations and the preventive, interventive and rehabilitative strategies to be adopted. Recommendations have been made as well for action at the international level. These are basically (a) to conduct an inventory and make a systematic analysis, including prioritization and allocation of action, of recommendations, initiatives and programmes of the United Nations, its affiliated agencies and non-governmental agencies, as well as of bilateral, regional or international agreements addressing the concerns of the mandate; and (b) to organize regional or international conferences for the persons and organizations representing the three catalysts for change that will delve into the specific concerns of the mandate particular to their respective fields.

84. While acknowledging that the problems covered by the mandate are multidimensional, ranging from structural or systemic to individual and less organized incursions against children, for which no single solution will ever be possible, the report nevertheless offers recommendations as to the first steps of a long, arduous journey. It is the Special Rapporteur's unwavering belief that someday soon, each of us will see in a child, any child, the humanity in us all.

Notes

1/ H. W. J. Buys, Report on the Sexual Exploitation of Children and Young Persons (Strasbourg, Council of Europe, 1989), p. 17.

2/ United States Customs Service.

3/ International Catholic Child Bureau, Children and Pornography (Geneva, ICCB, 1988), p. 2.

4/ E/CN.4/1994/84, para. 172.

5/ Cristina Szanton Blanc, Urban Children in Distress: Global Predicament (UNICEF, 1994), p. 29.

6/ E/CN.4/1992/55, para. 47.

7/ World Health Organization, International Digest of Health Legislation, 1991, vol. 42, pp. 389-413.

8/ See E/CN.4/1994/84, paras. 103-104.

9/ E/CN.4/1995/100, para. 50.

10/ A/CONF.169/16, chap. I, resolution 7, para. 23.